IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE K.M.JOSEPH

TUESDAY, THE 18TH JULY 2006 / 27TH ASHADHA,1928

ITA.No. 132 of 2001

AGAINST THE ORDER DATED 15.6.2001 IN
ITA.528 (Coch)/1996 of I.T.A.TRIBUNAL,COCHIN BENCH
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APPELLANT/APPELLANT:

SMT. P.G. BHANUMATHY, M/S. BHAVI BOOKS, COCHIN

BY ADV. SRI.P.BALAKRISHNAN (E)
SRI.R.AMRITHARAJ

RESPONDENT/RESPONDENT:

THE COMMISSIONER OF INCOMETAX, COCHIN.

BY ADV. SRI.P.K.R.MENON(SR.),SC FOR IT
SRI.GEORGE K. GEORGE, SC FOR IT

THIS INCOME TAX APPEAL HAVING BEEN FINALLY HEARD ON 18/07/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.N. RAMACHANDRAN NAIR &
K. M. JOSEPH, JJ.

I.T.APPEAL NO.132 OF 2001

Dated this the 18th day of July, 2006

JUDGMENT

C. N. Ramachandran Nair, J.

The appellant/assessee is challenging the order of the Income Tax Appellate Tribunal confirming disallowance of Rs.10 Lakhs in the computation of capital gain for the assessment year 1992 - 93. During the accounting year relevant for the assessment year 1992-93, the assessee sold a flat and received a net consideration of Rs.52 Lakhs. The facts on record disclosed that out of Rs.52 Lakhs, appellant invested Rs.44 Lakhs in the Syndicate Bank as Fixed Deposit and availed a loan of Rs.4 Lakhs on the security of the Fixed Deposit. After adjusting the loan amount, the balance amount of Rs.40 Lakhs received by the appellant was deposited in capital bonds issued by the IDBI on 26.5.1992 as investment in specified asset in terms of Section 54E of the Income Tax Act. The deposit in IDBI Bonds yielded an advance interest of Rs.9.4 Lakhs which

along with another amount of Rs.60,000/= taken by the appellant from the Bank was also deposited in IDBI Bonds on 28.5.1992. Since both the amounts were deposited within six months in terms of Section 54E, the appellant/assessee claimed exemption from capital gains on the entire deposit of Rs.50 Lakhs. Even though assessing officer allowed exemption attributable to Rs.40 Lakhs deposited by the appellant in specified asset under Section 54E of the Act, exemption was declined for the investment of Rs.10 Lakhs under the specified asset on the ground that the same does not form part of the net consideration. In the first appeal, disallowance was confirmed. Second appeal also met with the same fate and hence the assessee has filed this appeal before us under Section 260A of the Income Tax Act.

2. We have heard Shri P. Balakrishnan, learned counsel appearing for the appellant/assessee and also the learned standing counsel appearing for the Income Tax Department. Learned counsel for the appellant referred to the relevant

Sections, namely transfer as defined under Section 2 (47) of the Act. He also referred to Section 45(1A) which provides for assessment of notional capital gains on accrual basis and its eligibility for exemption Section 54E, to contend that actual net consideration received need not be invested in specified assets for claiming and granting exemption under Section 54E of the Act. In other words, the appellant's contention is that the net consideration as such need not be invested and investment of its equivalent in specified asset is sufficient to grant exemption under Section 54E of the Act. The question, therefore, to be considered is whether in order to qualify for exemption under Section 54E of the Act, the net consideration as such should be invested in specified assets provided under Section 54E of the Act or whether it is enough that the assessee raises funds from any source and deposits the equivalent sum of net consideration within six months from the date of transfer in specified assets. Even though learned counsel for the appellant/assessee has explained various situations whereunder the assessee may be

entitled to exemption from capital gains by investment in specified assets from sources which are not received on sale or exchange or transfer of the capital asset, we do not think any such hypothetical issue need be considered for deciding this case, the facts of which are stated above. There may be situations where assessee has not in fact received consideration on transactions amounting to transfer for the purpose of capital gains which do not yield any cash to the assessee or cases where assessee may be receiving payment beyond six months from the date of transfer disabling him from depositing from out of consideration for the purpose of claiming exemption under Section 54E of the Act, but still entitled to benefit by raising funds and depositing the equivalent net consideration or part thereof within the time stipulated under Section 54E of the Act. However, in this case, it is admitted that out of Rs.10 Lakhs disallowed under Section 54E of the Act, the source of Rs.9.4 Lakhs raised by the appellant is not part of the net consideration on sale of the flat by the appellant, but is the advance interest

yielded for the specified assets purchased by the appellant with the net consideration of Rs.40 Lakhs. The balance Rs.60,000/= is found to be deposited by the appellant by withdrawing from her S.B. Account, which is also not part of the net consideration. Even though we are in agreement with the appellant's counsel that there is no means provided under the Act to relate the identity of the net consideration with the investment in specified assets, what is contemplated under Section 54E is that the net consideration should be invested within the time stipulated therein. "Net Consideration" as defined in Explanation 5 to Section 54E(1) of the Act is as follows:

> "Explanation 5.- **"Net consideration",** in relation to the transfer of a capital asset, means the full value of the consideration received or accruing as a result of the transfer of the capital asset as reduced by any expenditure incurred wholly and exclusively in connection with such transfer."

3. It is obvious from the above that net consideration does not include any accruals on the investment from out of the net consideration of the asset transferred. "Net consideration" is

only net sale value obtained on transfer of capital asset, which is a full value received as reduced by expenditure incurred for and in connection with the transfer. The assessee's counsel submitted that the time-frame for investment under Section 54E is sufficient opportunity to the assessee to use the net consideration, generate income therefrom and invest from out of the same any amount in full or part of the net consideration in terms of Section 54E to get the benefit of exemption. Learned standing counsel for the respondent, on the other hand, contended that the purpose of granting six months' time is to grant reasonable time to the assessee to get the full consideration and to enable to make the re-investment and not to permit him to apply or divert the net consideration for any other purpose. According to him, the period provided under Section 54E is the upper limit and the spirit of the Act contemplates immediate deposit after consideration is received by the assessee. We are of the view that a strict compliance with Section 54E read with Explanation 5 to the sub-section requires

the assessee to deposit the net consideration received within the time stipulated therein, for the purpose of claiming exemption. Any diversion or application of the sale consideration, if proved, will disentitle the assessee from the benefit of exemption under Section 54E. However, there is no requirement that the same cash or same amount should be deposited for the purpose of exemption. There may not be any requirement to prove that the same cash received is deposited as such in specified asset. However, we have, no doubt, in our mind that the advance income generated on investment in specified assets under Section 54E cannot be treated as net consideration for re-investment in same or another specified asset for claiming exemption on such amount also. This is because once part of net consideration is spent by the assessee, the same is not available for re-investment. Consequently, if the assessee's argument is accepted, then shortage of net consideration invested in specified assets immediately after transfer can be made up from accruals in the form of interest on such

investment upto six months, to make up for balance net consideration for claiming exemption on the total investment which is not contemplated under Section 54E of the Act. We, therefore, answer the question referred to in the appeal in the affirmative i.e. Against the appellant/assessee and in favour of the Department and dismiss the appeal. We make it clear that this decision should not be interpreted to cover situations where the net consideration was not received by the assessee and should be limited to the facts of this case.

C.N. RAMACHANDRAN NAIR, JUDGE

K. M. JOSEPH, JUDGE

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C.N. RAMACHANDRAN NAIR &
K. M. JOSEPH, JJ.

I.T.APPEAL NO.132 OF 2001

JUDGMENT

18th July, 2006.